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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Edward T. Mott and Kacey Mott,
Plaintiffs,
vs.

Inspire Medical Systems, Inc., a Minnesota
Corporation; John and Jane Does I-X; ABC
Corporations I-X, Black and White
Partnerships I-X, and/or Sole Proprietorship
I-X,
Defendants.

No. _____

DEFENDANT
INSPIRE MEDICAL SYSTEMS, INC.'S
NOTICE OF REMOVAL

(Maricopa County Superior Court Case No.
CV2022-051747)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

Please take notice that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and L.R. Civ.
3.6, Defendant Inspire Medical Systems, Inc. (“Inspire”) hereby removes this case, originally
filed as CV2022-051747 in the Superior Court of the State of Arizona, County of Maricopa, to
the United States District Court for the District of Arizona, Phoenix Division and in support
thereof states as follows:

1 1. On June 1, 2022, Plaintiffs, Edward T. Mott and Kacey Mott, filed their
2 Complaint in the Superior Court of the State of Arizona, County of Maricopa as case number
3 CV2022-051747. A true and accurate copy of the Complaint is attached hereto as Exhibit A
4 (the “Complaint”).

5 2. The Complaint alleges personal injury to Mr. Mott after he was implanted with
6 the Inspire Generator Model 3028 (“Inspire Generator”), a medical device manufactured by
7 Inspire and used to treat a subset of patients with moderate to severe Obstructive Sleep Apnea
8 (“OSA”). [Compl. at ¶¶ 9, 14.] The Plaintiffs seek an award of compensatory and punitive
9 damages in addition to costs and attorney’s fees. The Complaint asserts the following claims:

- 10 a. Count I: Strict Liability,
- 11 b. Count II: Negligence,
- 12 c. Count III: Negligent Infliction of Emotional Distress, and
- 13 d. Count IV: Loss of Consortium.

14 3. Removal is timely because, pursuant to 28 U.S.C. § 1446(b), fewer than thirty
15 (30) days have passed since Inspire first received a proper request for waiver with a copy of
16 the Complaint, which was sent to Bryan Phillips via email on August 19, 2022. A true and
17 accurate copy of the email requesting waiver and attaching a copy of the Complaint is attached
18 hereto as Exhibit B.

19 4. No current motions and no further proceedings are pending in the State Action.

20 5. This action has not been previously removed to federal court.

21 6. Upon information and belief and in accordance with 28 U.S.C. § 1446(a), the
22 foregoing documents and exhibits, attached here to as Exhibit C, constitute all of the process,
23 pleadings, and orders served upon Inspire in the State Action.

24 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and,
25 therefore, it may be removed to this Court under 28 U.S.C. §§ 1441 and 1446. Removal under
26 section 1441 is appropriate when complete diversity of citizenship exists between the plaintiff
27 and all properly joined defendants, and the amount in controversy exceeds \$75,000.00, exclusive
28 of interest and costs.

1 8. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

2 9. The properly joined parties are citizens of different states, and this Court has
3 original jurisdiction of the above-entitled action pursuant to 28 U.S.C. § 1332(a). The action
4 may therefore be removed to this Court pursuant to 28 U.S.C. § 1441(a).

5 **I. REMOVAL IS PROPER.**

6 **A. Complete Diversity Of Citizenship Exists Between Plaintiffs And Inspire.**

7 10. For purposes of diversity citizenship, a corporation is deemed to be a citizen of
8 both the state of its incorporation and the state where its principal place of business resides. 28.
9 U.S.C. § 1332 (c)(1).

10 11. Plaintiffs are and were, at all relevant times, residents of Maricopa County,
11 Arizona, according to the Complaint. [Ex. A, ¶ 1.] Accordingly, and upon information and
12 belief, Plaintiffs are citizens of Arizona.

13 12. Defendant Inspire is a Delaware corporation headquartered in Golden Valley,
14 Minnesota. Defendant is therefore a citizen of Delaware and Minnesota for purposes of
15 determining diversity jurisdiction.

16 13. The remaining Defendants are fictitious parties. [*Id.*, ¶¶ 3-4.] Pursuant to 28
17 U.S.C. § 1441 (b)(1), in determining whether a civil action is removable on the basis of diversity
18 jurisdiction, the citizenship of defendants sued under fictitious names shall be disregarded.
19 *Satchell v. Lyft, Inc.*, No. 220CV01201KJDVCF, 2021 WL 641623, at *2 (D. Nev. Jan. 25,
20 2021) (denying motion to remand and noting “Congress’s intent is clear from the plain language
21 of the statute. The citizenship of defendants sued under fictitious names shall be disregarded for
22 purposes of removal.”)

23 14. Accordingly, complete diversity exists among the parties at the time Plaintiffs
24 filed their suit in state court and complete diversity exists among the parties at the time this
25 Notice of Removal is filed. Removal is proper under 28 U.S.C. § 1332(a)(1).

26 **B. The Amount In Controversy Exceeds \$75,000.**

27 15. Pursuant to 28 U.S.C. § 1446(c)(2)(A)(ii), Inspire asserts that the amount in
28 controversy in this matter exceeds \$75,000, exclusive of interests and costs. This assertion is

1 well-founded and made in good faith in light of the allegations in Plaintiffs' Complaint.

2 16. Plaintiffs' Complaint seeks damages for personal injury. [See Compl. at ¶¶ 14,
3 16, 29-30, 41, 42, 48-49, 51, 52.] Plaintiffs' Complaint also seeks punitive damages. [Id. at
4 ¶¶ 33, 43.]

5 17. Where (as here) the Complaint does not specify a particular amount in
6 controversy, a removing defendant's good-faith amount-in-controversy allegation should be
7 accepted when not contested by the plaintiff or questioned by the court. *Haire v. Liberty Ins.*
8 *Corp.*, No. CV-20-00686-PHX-DWL, 2020 WL 5088071, at *2 (D. Ariz. Aug. 28, 2020)
9 (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87-88 (2014)).

10 18. Additionally, settlement offers are "relevant evidence of the amount in
11 controversy if it appears to reflect a reasonable estimate of the plaintiff's claim." *Cohn v.*
12 *Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (finding a settlement letter was sufficient to
13 establish the amount in controversy).

14 19. Here, Plaintiffs sent Inspire a settlement demand letter on June 27, 2022, which
15 demanded \$250,000, in exchange for a full and final release of all claims arising out of the
16 Plaintiffs' injuries. In the letter, Plaintiffs detailed the damages Mr. Mott allegedly sustained as
17 a result of the incident described in the Complaint. The letter detailed ongoing permanent
18 damage and ongoing medical treatment. A true and accurate copy of the June 27, 2022, demand
19 letter is attached hereto as Exhibit D.

20 20. The demand letter additionally stated, "this demand is extremely reasonable,"
21 and "represents a steep discount over the actual value of [Mr. Mott's] case." [Ex. D at 6.]

22 21. Further, Plaintiffs' Complaint alleges:

- 23 ■ The Inspire Generator "implanted into Plaintiff caused him to develop severe
24 physical complications and injuries, including chronic and debilitating pain." [Ex.
25 A at ¶ 14.]
- 26 ■ Mr. Mott "sustained personal injuries and incurred medical expenses, lost wages,
27 lost earning capacity, and other special damages" and will continue in the future
28 to incur such damages. [Id. at ¶¶ 29-30.]
- Mr. Mott was "seriously and permanently injured as a result" of the incidents
alleged in the Complaint. [Id. at ¶ 51.]

- 1 ▪ Mrs. Mott suffered “severe emotional distress resulting in physical injury and/or
2 illness to her,” and “has been and will continue to be deprived of her husband’s
3 love, affection, support, companionship, counsel, advice, and solace,” due to the
4 incidents alleged in the Complaint. [*Id.* at ¶¶ 48, 52.]

5 22. In addition to compensatory damages, Plaintiffs also allege they are entitled to an
6 award of punitive damages. [*Id.* at ¶¶ 33, 43.]

7 23. Plaintiffs further certify the case “warrants case management and pretrial
8 discovery under Tier 3.” [*Id.* at 8 (“Tier Designation.”).] Under Ariz. Rs. Civ. P. 26.2(b)(3) and
9 26.2(c)(3), Tier 3 cases are “logistically or legally complex,” and actions claiming \$300,000 or
10 more in damages are assigned to Tier 3.

11 24. Plaintiffs’ demand letter and allegations demonstrate that the amount in
12 controversy is greater than \$75,000, exclusive of interest and court costs. *Cohn*, 281 F.3d at 840
13 (finding a settlement letter was sufficient to establish the amount in controversy); *dela Fuente v.*
14 *Humana Ins. Co.*, No. CV-11-0700-PHX-JAT, 2011 WL 4072021, at *3 (D. Ariz. Sept. 13,
15 2011) (same); *Hammarlund v. C.R. Bard, Inc.*, No. 215CV05506SVWJEM, 2015 WL 5826780,
16 at *2 (C.D. Cal. Oct. 2, 2015) (finding the amount in controversy had been met and noting “in
17 cases involving severe injuries, especially those requiring surgery, courts have found it facially
18 apparent from the complaint that the amount in controversy was satisfied.”); *Campbell v.*
19 *Bridgestone/Firestone, Inc.*, No. CIVF051499FVSDLB, 2006 WL 707291, at *2 (E.D. Cal.
20 Mar. 17, 2006) (finding the asserted damages made it “facially apparent that the amount in
21 controversy exceed[ed] \$75,000” where the complaint described plaintiff’s injuries as severe)

22 25. Accordingly, diversity jurisdiction exists because the jurisdictional amount
23 requirement has been met. *See* 28 U.S.C. § 1332(a).

24 **II. VENUE IS PROPER.**

25 26. Venue is proper in this Court, pursuant to 28 U.S.C. § 1441(a), because the State
26 Action was originally filed in Maricopa County, Arizona, which is within this Court’s district.

27 **III. CONSENT AND NOTICE.**

28 27. Pursuant to 28 U.S.C. § 1446(d) and L.R. Civ. 3.6, undersigned counsel
affirmatively states that written notice has been served on Plaintiffs, through Plaintiffs’ counsel,

1 and a copy of this Notice of Removal has been filed with the Superior Court for Maricopa
2 County, Arizona.

3 28. Pursuant to L.R. Civ. 3.6, the required Civil Cover Sheet and Supplemental Civil
4 Cover Sheet for Cases Removed from Another Jurisdiction are attached hereto as Exhibit E.

5 **RELIEF REQUESTED**

6 29. Based on the foregoing, this Court has original jurisdiction over this action
7 pursuant to 28 U.S.C. §§ 1332 because this is a civil action between citizens of different states
8 and the amount in controversy exceeds \$75,000. Accordingly, this action is properly removable
9 under 28 U.S.C. §§ 1441 and 1446. Defendant therefore respectfully gives notice and hereby
10 removes the above-entitled action from Maricopa County Superior court to the United States
11 District Court for the District of Arizona, Phoenix Division.

12 DATED this 12th day of September, 2022.

13 FAEGRE DRINKER BIDDLE & REATH LLP

14 By: s/ Kathryn E. Bettini

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22 Attorneys for Defendant Inspire Medical Systems,
23 Inc.
24
25
26
27
28

1 Filed electronically with the Court this
2 12th day of September, 2022.

3 COPY of the foregoing sent by e-mail
4 transmission and First Class Mail this
5 12th day of September, 2022, to:

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